STATE OF MICHIGAN

COURT OF APPEALS

JOHN R. SIEB, Personal Representative of the Estate of MARIA EUGENIA SIEB, Deceased,

Plaintiff-Appellee,

v

VOLKSWAGENWERK AKTIENGESELLSCHAFT,

Defendants,

and

GERHARD REICHEL AND DIETMAR K. HAENCHEN,

Appellants.

UNPUBLISHED
April 17, 2003

No. 231049
Oakland Circuit Court
LC No. 00-023318-CZ

Before: Meter, P.J., and Jansen and Talbot, JJ.

TALBOT, J. (*concurring in part and dissenting in part*).

I concur in all respects save the remand for assessing of costs for a partial violation of MCR 2.114(E).

The filing of a signed pleading[1] that is not well-grounded in fact and law subjects the filer to sanctions under MCR 2.114(E). *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 407-408; 651 NW2d 756 (2002). MCR 2.114(D) provides that the signature of an attorney or party constitutes a certification that (1) the attorney or party has read the pleading; (2) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and (3) the pleading is not interposed for any improper purpose. *In re Forfeiture of Cash & Gambling Paraphernalia*, 203 Mich App 69, 71; 512 NW2d 49 (1993). "Not every error in legal analysis constitutes a

[1] "[T]he rules on the . . . signing. . . of pleadings apply to all motions, affidavits, and other papers provided for by the court rules. MCR 2.113(A)." *Bechtold v Morris*, 443 Mich 105, 108-109; 503 NW2d 654 (1993).

frivolous position." *Kitchen v Kitchen*, 465 Mich 654, 663; 641 NW2d 245 (2002). The imposition of a sanction under MCR 2.114 is mandatory upon the finding that a pleading was signed in violation of the court rule or a frivolous action or defense had been pleaded. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

Appellants' motion to quash the subpoenas duces tecum did not warrant sanctions. The circuit court found that appellants' motion was frivolous because MCR 2.305(E) clearly permitted Josephs to petition the court for the subpoenas duces tecum irrespective of his status to practice law in Michigan. However, the court did not address the other arguments advanced by appellants in their motion. The court deferred to the Florida court regarding whether appellants had knowledge relevant to the case, but did not rely on any ruling or finding by the Florida court. The court did not address appellants' arguments that they had no authority to produce the requested documents and that plaintiff's request for the production of documents was oppressive. Even if the court correctly determined that appellants' challenge to Josephs' filing of the petition was frivolous, appellants' other asserted grounds for quashing the subpoenas duces tecum, which were supported by affidavits and which the court did not address, were not frivolous.

The majority acknowledges this fact when it remands to the trial court to assess costs for raising one frivolous argument out of four. The court rule simply does not allow for such a piecemeal approach in evaluating the validity of appellants' motion. Such an approach would swamp our trial courts if they were required to finely slice every pleading and motion filed as to the merits of each argument advanced. Viewed in its entirety, appellants' motion was sufficiently grounded in law and fact to avoid sanctions.

/s/ Michael J. Talbot